

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

Docket No. **EPCRA-08-2003-0004**

IN THE MATTER OF:	)	
	)	
	)	
Dakota Country Cheese	)	
305 Bis Man Avenue	)	<b>FINAL ORDER</b>
Mandan, ND 58554	)	
	)	
Respondent	)	
	)	
	)	

Pursuant to 40 C.F.R. § 22.18(c) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Consent Order. The Respondent is hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Consent Order.

So ORDERED, this 26<sup>th</sup> day of March, 2004.

**SIGNED**

\_\_\_\_\_  
Alfred C. Smith  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

**Docket No. EPCRA-08-2003-0004**

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IN THE MATTER OF:	)	
	)	
Dakota Country Cheese	)	
305 Bis Man Avenue	)	
Mandan, ND 58554	)	CONSENT AGREEMENT
	)	
Respondent	)	
	)	
	)	

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Complainant, United States Environmental Protection Agency, Region 8 ("EPA"), and Dakota Country Cheese, Inc., ("Respondent"), by their undersigned representatives, hereby consent and agree as follows:

**I.        PRELIMINARY STATEMENT**

1.        On September 30, 2003, Complainant issued a Complaint alleging certain violations of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA") 42 U.S.C. § 11045. The Complaint proposed a civil penalty for the violations alleged therein.
2.        This Consent Agreement (the "Agreement") applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, employees, agents, successors and assigns. Any change in the constitution of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.
3.        Respondent waives its right to a hearing on any issue of

law or fact set forth in the Complaint.

4. Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
5. The EPA is authorized to seek enforcement in this case pursuant to section 325 of EPCRA, 42 U.S.C. § 11045.

## **II. TERMS OF SETTLEMENT**

6. Respondent has achieved compliance with the requirements that formed the basis of the counts alleged in the Complaint.
7. Complainant has evaluated Respondent's financial condition and concludes that Respondent is able to pay only a greatly reduced penalty in this matter and that the collection of **\$500.00** in penalties is appropriate to settle this action, taking into consideration the nature of the violation, Respondent's ability to pay a penalty, Respondent's agreement to perform conditions relevant to assure future compliance and other relevant factors.
8. Respondent agrees and acknowledges that all payments made for the payment of penalties as a part of this agreement do not qualify for any kind of favorable tax treatment.
9. Within thirty days (30) of receipt of the Combined Consent Agreement and the Final Order issued by the Regional Judicial Officer in this matter, Respondent shall make the agreed settlement payment in the amount of FIVE HUNDRED DOLLARS (\$500.00). For purposes of calculating timely payment, the term "issuance" shall mean the date the Final Order is signed by the Regional Presiding Officer. Payment shall be made by remitting a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P. O. Box 360859M  
Pittsburgh, PA 15251

The payment must reference Respondent's name and facility address, the EPA Docket Number of this action, and Respondent's Taxpayer Identification Number (T.I.N.). A copy of the check must be mailed simultaneously to the addressees listed below:

Regional Hearing Clerk  
U.S. EPA, Region 8 (8RC)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

(and)

Ms. Cheryl Turcotte  
Senior Enforcement Coordinator  
U.S. EPA, Region VIII (8ENF-L)  
999 18th Street, Suite 300  
Denver, Co 80202-2466

8. Respondent consents to the issuance of a Consent Order which incorporates the requirements of this Agreement and the performance of future compliance-related conditions set out below.
9. Respondent filed late Form Rs on October 8, 2003. These late forms cover calendar years 1999-2001.
10. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
11. This Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the specific violations alleged in the Complaint filed herein. This Consent Agreement shall not in any event affect EPA's right to pursue

appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

12. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Agreement and to execute and legally bind that party to this Agreement.

13. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Agreement.

**III. AGREEMENT REGARDING FUTURE COMPLIANCE WITH EPCRA**

14. Respondent agrees to place \$3,000.00 in an account with its attorney, Mr. Irwin B. Nodland, Esq., within 30 days of the entry of the Final Consent Order in this matter, for the purpose of pre-paying three years' of data evaluation consulting work specifically to fully complete all EPCRA reporting obligations placed on Respondent by EPCRA. Within 60 days of the entry of the Final Consent Order in this matter, Respondent will identify a consultant to be used in the preparation and submission of required Form Rs. No later than July 1, 2004, the Respondent will submit required Form Rs to the EPA Reporting Center and to the State of North Dakota for calendar years 2002 and 2003.

15. Respondent, acting through its attorney, agrees to consult with EPA Region 8 regarding the qualifications and expertise of its data evaluation consultant, prior to employing same.

16. Respondent's attorney, Mr. Irwin B. Nodland, Esq., acknowledges his fiduciary obligation to keep, hold, and properly disperse such monies described above and as are deposited with him by Respondent for a three-year period.

17. All monies so deposited as set out in Paragraph 14 above, will be returned to the Respondent by Mr. Nodland after all payments are made and all required EPCRA forms are properly and timely filed by Respondent through July 1, 2006.

IN THE MATTER OF: Dakota Country Cheese, Inc.,  
Docket No. EPCRA-08-2003-0004

UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY, REGION 8,  
OFFICE OF ENFORCEMENT, COMPLIANCE, AND  
ENVIRONMENTAL JUSTICE,

Complainant.

Date: 3/25/04\_\_\_\_\_

By: David J. Janik\_\_\_\_\_  
Michael T. Risner, Director  
David J. Janik, Supervisory Enforcement  
Attorney  
Legal Enforcement Program

Date: 3/25/04\_\_\_\_\_

By: SIGNED\_\_\_\_\_  
Martin Hestmark, Director  
Technical Enforcement Program

Date: March 25, 2004\_\_\_\_\_

By: SIGNED\_\_\_\_\_  
Dana J. Stotsky  
Senior Enforcement Attorney  
Legal Enforcement Program  
Colorado Bar # 14717  
Phone: (303)-312-6905  
FAX: (303) 312-6953

DAKOTA COUNTRY CHEESE, INC.

Respondent.

Date: 3-24-2004

By: Virgil Johnson\_\_\_\_\_  
NAME:

TITLE: **President, Dakota Country Cheese, Inc.**

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **DAKOTA COUNTRY CHEESE, DOCKET NO.: EPCRA-08-2003-0004** was filed with the Regional Hearing Clerk on March 26, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Dana Stotsky, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on March 26, 2004, to:

Irvine B. Nodland, Esq.  
P. O. Box 640  
Bismarck, ND 58502-0640

and pouch mailed to:

Honorable Spencer T. Nissen  
Administrative Law Judge (1900L)  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

March 26, 2004

**SIGNED**  
\_\_\_\_\_  
Tina Artemis  
Regional Hearing Clerk

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON MARCH 26, 2004.**